and restored the order made by Plowman J. It was held that in that case, E. and N. had formed the company on the basis that their prior association in which E. was entitled to participate in the management would, as a matter of personal relationship and good faith, remain the same and that to exclude E. from participation in the management would be in breach of good faith as in the case of a partnership.

In this case, the position is clearly different. It seems to me clear that at the time when the Company was incorporated, Boey intended it to be a company to take over and continue his business which he had been carrying on as a sole proprietor for many years. It was formed essentially so that he and his family could have shares in it, and since the petitioner had been working for him for a considerable period of time, he was allowed to have a minority stake in the Company. It was never meant to be a partnership between Boey and his wife on the one hand and the petitioner on the other. At any rate, there was no attempt made by Madam Goh to exclude the petitioner from participation in the management of the Company or oust him from the board. Nor, on the material before me, was there sufficient evidence to show any breach of good faith or a lack of probity on the part of Madam Goh.

The second ground on which Mr. Wee relies is that the substratum of the Company has gone and therefore it is just and equitable that the Company should be wound up. He said that the petitioner had withdrawn from the Company since the end of 1986 and since then the Company has had no contracting business and is an empty shell. On this, he is met with an insurmountable difficulty: there is not the slightest shred of evidence to support his contention. In my view this ground is clearly unsustainable and must fail.

In conclusion, I find that the petitioner has not made out his case that it is just and equitable that the Company should be wound up, and accordingly, I dismiss the petition with costs. The injunctions previously granted, pending the hearing of this petition, should now be discharged.

Order accordingly.

Solicitors: *Wee Eng Lock & Son; Chee & Teo.*

MOHAN SINGH v. ATTORNEY-GENERAL

[O.C.J. (Lai Kew Chai J.) July 29, 1987]

[Singapore – Suit No. 925 of 1983]

Constitutional Law – Citizenship – Applicant born in Singapore but travelling on Indian passport – Whether applicant had "ceased to be a citizen of Singapore" – Constitution of Singapore, arts. 133(1), 134(3) & 135(2).

Administrative Law – Citizenship – Applicant's claim to Singapore citizenship – Applicant travelling on Indian passport – Termination of citizenship by Minister – Whether breach of natural justice – Constitution of Singapore, Art. 134(3).

The plaintiff in this case was born on May 8, 1951 in Singapore. His father was a citizen of Singapore but his mother was a citizen of India. When the plaintiff was almost 2 years old he was taken to India, travelling on his mother's passport. He lived in India from 1953 to February 1981. He schooled in India. He finished schooling in 1972. He said that he could not return to Singapore because he had to look after his sickly paternal grandmother and mother.

The plaintiff travelled to Singapore on an Indian passport. He explained that he had to do so, that he had no choice, because earlier he was denied one when he called at the Singapore High Commission in New Delhi, India where he was turned away.

As he was refused a Singapore passport, he applied for and obtained an Indian passport. In his application he had falsely mentioned that his birth place was Budhipind Hoshiarpur in order to obtain the Indian passport to travel to Singapore. His passport had been returned to the Indian High Commission in Singapore and they had impounded it.

In March 1981 the plaintiff's solicitors applied on his behalf for a certificate of status under sub regulations (1), (2) and (3) of regulation 3 of The Immigration Regulations 1972. The plaintiff's solicitors wrote to the Registrar of Citizens and explained that the plaintiff had gone to India to study after which he had to look after his mother and grandmother. The plaintiff had returned to Singapore and had "obtained an Indian passport purely for the purpose of his travel to Singapore."

In May 1982 the Minister for Home Affairs declared that in the circumstances the plaintiff had ceased to be a citizen of Singapore under the then Article 134(3) of the Constitution of Singapore. The declaration was made on the ground that the plaintiff had since November 15, 1980 voluntarily claimed and exercised rights available to himself under the law of India, such rights being rights not available to other Commonwealth citizens. The plaintiff failed in his appeal to the Minister for Home Affairs and he commenced the present actions. He sought declarations to the effect (a) that the cessation of his citizenship was null and void; (b) that he was a citizen of Singapore; and (c) that he was permitted to remain in Singapore under Article 13 of the Constitution.

The issue was whether the Singapore High Commission in New Delhi, India had refused the plaintiff's application for a passport and that therefore he was compelled to

obtain the Indian passport in order to travel to Singapore to stake his claim to citizenship in Singapore.

Held, dismissing the application: (1) by obtaining and travelling on his Indian passport, the plaintiff had voluntarily claimed and exercised the rights of a citizen of India;

(2) where there are overlapping powers the choice of proceeding under one of the other statutory or constitutional provision is plainly a matter of Executive discretion and that the exercise of such discretion is not justiciable unless bad faith is shown;

(3) the scope of judicial review does not extend to this court purporting to act in an appellate capacity and assessing the sufficiency of the evidence before the Minister for Home Affairs. He had acted within his jurisdiction and it was not for this court to substitute its views on what should be the effect of the evidence before him.

Cases referred to:

(1) *Westminster Bank* v. *Minister of Housing and Local Government* [1971] A.C. 508.
(2) *Attorney-General of Bahamas* v. *Ryan* [1980] A.C. 718, 727.
(3) *Najar Singh* v. *Government of Malaysia & Anor.* [1976] 1 M.L.J. 203.
(4) *Chief Constable of North Wales Police* v. *Evans* [1982] 3 All E.R. 141, 154.
(5) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 1 All E.R. 208.
(6) *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia (No.2)* [1975] 2 M.L.J. 175.
(7) *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* [1980] 2 M.L.J. 165, 168.
(8) *Council of Civil Service Unions & Ors.* v. *Minister for the Civil Service* [1984] 3 All E.R. 935, 950.

CIVIL SUIT.

Mirza Namazie for the plaintiff.

Chao Hick Tin (Sr. State Counsel)(*Charles Lim Aeng Cheng*, State Counsel, with him) for the defendant.

Cur. Adv. Vult.

Lai Kew Chai J.: In this action the plaintiff is seeking several declarations to the effect (a) that the cessation of his citizenship under the then Article 134(3) of the Constitution (as unamended by Act No. 10 of 1985 effective January 2, 1986) because he had since November 15, 1980 voluntarily exercised rights available to him as an Indian national within the meaning of the said Article of the Constitution was null and void; (b) that he is a citizen of Singapore; and (c) that he is permitted to remain in Singapore under Article 13 of the Constitution. Consequentially, he asks from the Controller of Immigration a Certificate of Status to that effect.

The defendant asserts that the plaintiff had since November 15, 1980 voluntarily claimed and exercised rights available to him as an Indian national within the meaning of the former Article 134(3) of the Constitution and that the termination of the citizenship of the plaintiff was properly declared by the Government. Further, and in any event, the defendant relies upon the provisions of section 2 of the Third Schedule of the Constitution which states that a decision of the Government under Part X (which refers to citizenship) shall not be subject to appeal or review in any court and by virtue of this section (which is hereinafter referred to as "the ouster clause") the defendant urges this court to resist entertaining this suit.

Before I consider and set out the law on the scope of judicial review where there is an ouster clause in the Constitution, I must dispose of an issue of fact between the parties which both parties had submitted to me for determination. The issue is whether the Singapore High Commission in New Delhi, India had refused the plaintiff's application for a passport and that therefore he was, as he asserts, compelled to obtain the Indian passport in order to travel to Singapore to stake his claim to citizenship here. If the claim is made good it could not be said that he had voluntarily claimed and exercised the exclusive right of an Indian citizen to possess an Indian passport. Without this collateral or jurisdictional fact, the Government would not have jurisdiction to act under Article 134(3).

The plaintiff was born on May 8, 1951 at the Kandang Kerbau Hospital, Singapore. He produced his birth certificate. His father at his birth was and still is a citizen of Singapore. His mother, however, was a citizen of India. When the plaintiff was almost 2 years old he was taken to India, travelling on his mother's passport. He lived in India from 1953 to February 1981. He schooled at the Budhipind High School, Hoshiarpur, Punjab, India and finished schooling in 1972. He said in evidence he could not return to Singapore because he had to look after his sickly paternal grandmother and his mother. He has two sisters and a younger brother. His elder sister was married while he was schooling; the younger sister married in 1979. In India, the plaintiff also had to tend to two buffaloes. On his return to Singapore his younger brother took over his family duties.

The plaintiff travelled to Singapore on an Indian passport. He explained that he had to do so, that he had no choice, because earlier he was denied one when he called at the Singapore High Commis-

sion in New Delhi, India where he was turned away. He said he travelled some 200 miles, the bus journey taking some 6 hours, to get to the High Commission. At the High Commission he made a verbal request for a Singapore passport but was refused one.

As he was refused a Singapore passport, he applied for and obtained an Indian passport from Jalandhai (formerly spelt as Jullundar), District Headquarters of the District of Jalandhai. It was some 25 miles from the plaintiff's home. In his application he had falsely mentioned that his place of birth was Budhipind Hoshiarpur in order to obtain the Indian passport to travel to Singapore. His passport has been returned to the Indian High Commission in Singapore and they had impounded it.

In cross-examination, the plaintiff said that he had met a male Indian counter staff at the Singapore High Commission. He showed him his birth certificate and asked for a Singapore passport. He had brought along his passport photographs and passport application for an Indian passport but he did not show these documents to the counter staff at the Singapore High Commission. He said the counter staff told him that it could not be done. When asked by the court if the counter staff had told him to apply for the passport in Singapore the plaintiff said: "No. All he said was: 'we are not going to write your place of birth as Singapore'." When reminded that in the statement of claim he had averred that he was advised that he had to go to Singapore to apply for a Singapore passport, the plaintiff answered that the counter staff had in fact said that to him. He explained that he had forgotten about that. After a brief visit to the Singapore High Commission, he left for home. He did not put in an application in writing and did not fill up any application form.

His father gave evidence on his behalf. His father was in Singapore when the application was made and therefore could not say anything helpful on the matter. He said, however, that he did not encourage his son to come to Singapore and his arrival was a little of a surprise to him. Although he did not encourage his son to come to Singapore he did in his testimony confirm his son's evidence that he had in one of his letters home advised his son that if he wanted to come to Singapore he had to go to the Singapore High Commission in New Delhi to apply for a passport.

However, I found it a little odd that though the plaintiff's father was in India visiting the family during the months almost immediately preceding the plaintiff's application for an Indian passport, which was issued in November 1980, it was the father's evidence that he, the father, was completely in the dark about the son's alleged application for the Indian passport. As paterfamilias, I think he must have known as he would have been consulted in advance. It was a major decision to uproot everything and come to Singapore, to apply for an Indian passport, and to incur all the expenses, including the airfare, to come to Singapore.

Evidence was led by the defendant on the practice of the Singapore High Commission in New Delhi in a situation like that alleged to have occurred in this case. Tan Kok Nam, who was at the material time an officer in the Singapore High Commission in charge of consular matters including applications for Singapore passports, gave evidence on the practice. Any applicant calling at the High Commission would be advised to complete a set of standard forms and return them accompanied by the relevant documents such as birth certificates, citizenship certificates and any other documents which was thought helpful for the decision-making process. The application and documents would be sent back to Singapore's Immigration Department for processing. It was not for the High Commission to decide on the application.

On these evidence, I find on the intrinsic probabilities of the case and having seen and heard the plaintiff in the witness box that in fact he did not, contrary to his allegations, visit the Singapore High Commission in New Delhi, India at all. The plaintiff's account is inconsistent with the practice at the Singapore High Commission as described by Tan Kok Nam. The plaintiff's reply to the show cause letter did not allege that he was compelled to obtain an Indian passport because he was earlier refused a Singapore passport. This point was only raised on May 28, 1982 after the plaintiff had received the Minister's decision to terminate his citizenship. Having heard him, I did not believe him. By obtaining and travelling on his Indian passport, the plaintiff had voluntarily claimed and exercised the rights of a citizen of India.

In March 1981 the plaintiff's solicitors applied on his behalf for a certificate of status under sub-regulations (1), (2) and (3) of regulation 3 of The Immigration Regulations, 1972. He claimed, quite correctly, that he was a citizen of Singapore by virtue of section 4 of the then Singapore Citizenship Ordinance (Ordinance 35 of 1951). In the

application and the accompanying statutory declaration it was stated that the plaintiff was in possession of an Indian passport No. 0721967 issued in India on November 15, 1980. About a week later, the plaintiff's solicitors wrote to the Registrar of Citizens in which it was explained that the plaintiff had gone to India to study after which he had to look after his mother and grandmother who were both of indifferent health. In one paragraph it was stated that the plaintiff had returned to Singapore and had "obtained an Indian passport purely for the purpose of his travel to Singapore."

By his letter dated April 21, 1981 the Registrar of Citizens after referring to the plaintiff's possession of the Indian passport and giving notice that that action affected his status as a citizen gave the plaintiff "an opportunity to make representations or to produce evidence that (he had) not voluntarily claimed and exercised any rights available to (him) under the law of India, being rights accorded exclusively to citizens of India."

Paragraphs 3 and 4 of the said letter of the Registrar stated as follows:

"3 Please let me know –

a whether you are prepared to give up your Indian citizenship if in the event that you are allowed to retain your Singapore citizenship;

b whether you had previously made any attempt to retain your Singapore citizenship. If so, to produce the evidence;

c your educational qualification (Academic/Professional); give name of school/College/University (state country) and the year highest qualification attained;

d your family particulars i.e. wife/husband and children, parents, brothers and sisters giving their names, nationality status, occupation and place of residence. If they are *not* Singapore citizens and are residing in Singapore state whether they are permanent residents of Singapore or on visit/employment/work permit passes.

e whether you are prepared to serve National Service.

4 You are further warned that pending a decision whether or not your Singapore citizenship is to be terminated, you are advised not to renounce your India citizenship/surrender your Indian passport."

In his solicitor's reply dated May 5, 1981 the replies to paragraph 3 above were in the following terms:

"(a) Our client obtained an Indian passport for the purpose of travelling to Singapore. He has never considered himself to be a citizen of India. However, if he is to be considered as one, he will certainly give it up.

(b) He went to India as a child and is totally ignorant of the laws relating to citizenship.

(c) He studied up to the 10th Standard at Budhipind High School, Hoshiar Pour, Punjab. Our client has written to the said School for a certificate in order that documentary evidence may be adduced in support of the above.

(d) His father whose name is Sadhu Singh s/o Hari Singh, is a Singapore citizen and holds Identity Card No. 0761231/A."

It will be observed that so far no reference was made to the plaintiff's unsuccessful attempt to obtain a Singapore passport at the Singapore High Commission in New Delhi, India.

In May 1982 the Minister for Home Affairs declared that in the circumstances the plaintiff had ceased to be a citizen of Singapore under the then Article 134(3) of the Constitution of Singapore. The declaration was made on the ground that the plaintiff had since November 15, 1980 voluntarily claimed and exercised rights available to himself under the law of India, such rights being rights not available to other Commonwealth citizens. The plaintiff failed in his appeal to the Minister for Home Affairs and he therefore commenced this suit seeking the reliefs referred to earlier.

The first ground relied on by the plaintiff turns on the provisions of Article 134(3) and Article 135(2) read with Article 133(1) of Part X of the Constitution in their original form and unamended by the Constitution of Singapore (Amendment) Act 1985 which took effect from January 2, 1986. Both Articles 134(3) and 135(2) of the Constitution conferred overlapping powers on the Government under the first-mentioned Article to declare a citizen concerned "to have ceased to be a citizen of Singapore" and under the second-mentioned Article to "deprive" the citizen concerned of his citizenship. The one difference to note between these two constitutional provisions, as they stood at the relevant times, was that if the Government had acted under Article 135(2) of the Constitution the Government would have been mandatorily required to give the plaintiff notice in writing informing him of the ground on which the order of deprivation was proposed to be made and of his right to have the case referred to a committee of inquiry which if convened at the request of the person concerned or in any other case at the discretion of the Government would be a committee of three members which would have to be chaired by a person qualified to be appointed as a Judge of the Supreme Court.

Article 133(1) as it then was read as follows:

"Before making an order under Article 129, 132 or 135, the Government shall give the person, against whom the order is proposed to be made, notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article."

Article 134 was not referred to.

Article 134(3) as it then was read as follows:

"If the Government is satisfied that any citizen of Singapore specified in clause (1) has, at any time after the 6th day of April, 1960, voluntarily claimed and exercised any rights available to him under the law of the United Kingdom or of the Republic of Ireland or of any other country, other than Singapore, for the time being included in subsection (3) of section 1 of the British Nationality Act, 1948, being rights not available to other Commonwealth citizens, the Government may declare such person to have ceased to be a citizen of Singapore."

Article 135(2) as it then was read as follows:

"If the Government is satisfied that any citizen of Singapore has voluntarily claimed and exercised in a foreign country any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Government may, by order, deprive that person of his citizenship."

In this part of his case the plaintiff says that by failing to proceed under Article 135(2) the Government had deprived him of his right to be heard which his learned counsel says amounted to a breach of an aspect of the rules of natural justice. For the defendant it is contended by the learned Senior State Counsel that the decision to proceed under one or the other of the Articles of the Constitution was a matter of Executive discretion and that such choice was not reviewable by the courts unless bad faith was shown: see *Wade* on Administrative Law, 5th edn., at p.368 and *Westminster Bank* v. *Minister of Housing and Local Government*[1] where Lord Reid stated at p.530 C to F as follows:

"Parliament has chosen to set up two different ways of preventing development which would interfere with schemes for street widening. It must have been aware that one involved paying compensation but the other did not. Nevertheless it expressed no preference, and imposed no limit on the use of either. No doubt there might be special circumstances which make it unreasonable or an abuse of power to use one of these methods but here there were none. Even if the appellants' view of the facts is right, the authority had to choose whether to leave the appellants without compensation or to impose a burden on its ratepayers. One may think that it would be most equitable that the burden should be shared. But the Minister of Transport had made it clear in a circular sent to local authorities in 1954 that there would be no grant if a local authority proceeded in such a way that compensation would be payable, and there is nothing to indicate any disapproval of this policy by Parliament and nothing in any of the legislation to indicate that Parliament disapproved of depriving the subject of compensation. I cannot in these circumstances find any abuse of power in the local authority deciding that the appellants and not its ratepayers should bear the burden."

Learned Senior State Counsel also refers to Paragraph 2 of the Third Schedule to the Constitution (earlier referred to as "the ouster clause") which read and still reads as follows:

"A decision of the Government under Part X shall not be subject to appeal or review in any court."

In view of the ouster clause it is urged that *a fortiori* the choice of the Executive in proceeding under Article 134(3) should not be justiciable; although it is not the defendant's contention that an ouster clause in the Constitution is a complete bar to judicial review.

In my judgment where there are overlapping powers the choice of proceeding under one or the other statutory or constitutional provision is plainly a matter of Executive discretion and that the exercise of such discretion is not justiciable unless bad faith is shown.

There is in this case no suggestion of any bad faith. There was no requirement that cases under Article 134(3), as this was, had to be referred to a committee of inquiry. Nor was there any breach of natural justice, it being the clear law that no oral hearing was required: see *Attorney-General of Bahamas* v. *Ryan*[2] and *Najar Singh* v. *Government of Malaysia & Anor.*[3]

In fact, the plaintiff was asked specifically in writing to make representations and to produce evidence that he had not voluntarily claimed and exercised any rights under the law of India, being rights not available to other Commonwealth citizens. His reply, as noted earlier, was that he had "obtained an Indian passport for the purpose of travelling to Singapore." There was no allegation that the plaintiff had called at the Singapore High Commission in New Delhi, India to apply for a Singapore passport and that he was turned away. This allegation was only raised after the Government had acted under Article 134(3).

For these reasons, I must reject the first ground on which the plaintiff relies.

The second ground upon which the plaintiff relies to support his assertion that the Minister for

Home Affairs had exceeded his jurisdiction and that therefore the declarations which the plaintiff seeks should be made by the High Court is the contention that the Government had no basis to be 'satisfied' that the plaintiff had voluntarily claimed and exercised the rights of an Indian citizen not available to other Commonwealth citizens. This is plainly a bald assertion manifestly at variance with the facts established by the evidence in this case which were available before the Minister for Home Affairs.

The scope of judicial review does not extend to this court purporting to act in an appellate capacity and assessing the sufficiency of the evidence before the Minister for Home Affairs. He had acted within his jurisdiction and it is plainly not for this court to substitute its views on what should be the effect of the evidence before him. It repays reciting what Lord Brightman said in *Chief Constable of North Wales Police* v. *Evans*[4]:

"Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the famous case of *Anisminic Ltd.* v. *Foreign Compensation Commission,*[5] which was a 3-2 decision, all five Law Lords unanimously spoke in one voice in saying that an error of law within jurisdiction was not amenable to judicial intervention.

On this aspect of the scope of judicial review, it is vital to bear in mind the distinction between those errors of law that give rise to an excess of jurisdiction and those that do not. An excellent analysis on the difference, if I may say so, is found in *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia (No.2)*[6] and the correctness of that analysis was affirmed by the Privy Council in *South East Asia Fire Bricks Sdn Bhd* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.*[7]

To summarise this branch of the law, in the absence of any other more logically attractive formulation, I think it apposite to quote what Lord Diplock had said in *Council of Civil Service Unions and Others* v. *Minister for the Civil Service*:[8]

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds."

It will be observed that excess of jurisdiction as a ground for judicial review was grouped by Lord Diplock as the first ground which he called 'illegality.' To understand the three grounds warranting judicial intervention, which are not exhaustive as Lord Diplock made clear, I should quote Lord Diplock's elaboration on 'illegality,' 'irrationality' and 'procedural impropriety' at pp.950-951:

"By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corp* [1947] 2 All E.R. 680, [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards (Inspector of Taxes)* v. *Bairstow* [1955] 3 All E.R. 48, [1956] AC 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

On the principles of law regulating judicial intervention as set out above, there is plainly no merit in the second ground at all.

In the premises the plaintiff's claims are dismissed with costs.

Claims dismissed.

Solicitors: *Mallal & Namazie*